

§§ 1925.5–1925.50 [Reserved]

PART 1927—TITLE CLEARANCE AND LOAN CLOSING

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SOURCE: 61 FR 11711, Mar. 22, 1996, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Real Estate Title Clearance and Loan Closing

§ 1927.51 General.

(a) *Types of loans covered by this subpart.* This subpart sets forth the authorities, policies, and procedures for real estate title clearance and closing of loans, assumptions, voluntary conveyances and credit sales in connection with the following types of Rural Housing Service (RHS) and Farm Service Agency (FSA) loans: Farm Ownership (FO), Nonfarm Enterprise (FO-NFE), Emergency (EM), Operating (OL), Rural Housing (RH), Farm Labor Housing (LH), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Soil and Water (SW), Indian Land acquisition loans involving nontrust property, and NonProgram (NP) loans. This subpart does not apply to guaranteed loans.

(b) *Programs not covered by this subpart.* Title clearance and closing for all other types of agency loans and assumptions will be handled as provided in the applicable program instructions

or as provided in special authorizations from the National Office.

(c) [Reserved]

(d) Copies of all agency forms referenced in this regulation and the agency's internal administrative procedures for title clearance and loan closing are available upon request from the agency's State Office. Forms and title clearance and loan closing requirements which are specific for any individual state must be obtained from the agency State Office for that state.

§ 1927.52 Definitions.

Agency. The Rural Housing Service (RHS) and Farm Service Agency (FSA) or their successor agencies.

Approval official. The agency employee who has been delegated the authority to approve, close, and service the particular kind of loan, will approve an attorney or title company as closing agent for the loans. If a loan must be approved at a higher level, the initiating office may approve the closing agent.

Approved attorney. A duly licensed attorney, approved by the agency, who provides title opinions directly to the agency and the borrower or upon whose certification of title an approved title insurance company issues a policy of title insurance. Approved attorneys also close loans, assumptions, credit sales, and voluntary conveyances and disburse funds in connection with agency loans. Approved attorney is further defined in §1927.54(c).

Approved title insurance company. A title insurance company, approved by the agency, (including its local representatives, employees, agents, and attorneys) that issues a policy of title insurance. Depending on the local practice, an approved title insurance company may also close loans, assumptions, credit sales, and voluntary conveyances and disburse funds in connection with agency loans. If the approved title insurance company does not close the loan itself, the loan closing functions may be performed by approved attorneys or closing agents authorized by the approved title insurance company.

Borrower. The party indebted to the agency after the loan, assumption, or credit sale is closed.

Certificate of title. A certified statement as to land ownership, based upon examination of record title.

Closed loan. A loan is considered to be closed when the mortgage is filed for record and the appropriate lien has been obtained.

Closing agent. The approved attorney or title company selected by the applicant and approved by the agency to provide closing services for the proposed loan. Unless a title insurance company also provides loan closing services, the term “title company” does not include “title insurance company.”

Closing protection letter. An agreement issued by an approved title insurance company which is an American Land Title Association (ALTA) form closing protection letter or which is otherwise acceptable to the agency and which protects the agency against damage, loss, fraud, theft, or injury as a result of negligence by the issuing agent, approved attorney, or title company when title clearance is done by means of a policy of title insurance. Depending on the area, closing protection letters may also be known as “Insured Closing Letters,” “Indemnification Agreements,” “Insured Closing Service Agreements,” or “Statements of Settlement Service Responsibilities.”

Cosigner. A party who joins in the execution of a promissory note or assumption agreement to guarantee repayment of the debt.

Credit sale. A sale in which the agency provides credit to the purchasers of agency inventory property. Title clearance and closing of a credit sale are the same as for an initial loan except the property is conveyed by quitclaim deed.

Deed of trust. See trust deed.

Exceptions. Exceptions include, but are not limited to, recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; taxes and assessments; rights-of-way; leases; mineral, oil, gas, and geothermal rights (with or without the right of surface entry); timber and water rights; judgments; pending court proceedings in Federal and State courts (including bankruptcy); probate proceedings; and agreements which limit or affect the title to the property.

Fee simple. An estate in land of which the owner has unqualified ownership and power of disposition.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture (and any successor agency). FSA is the successor agency for farm program loans of the former Farmers Home Administration.

General warranty deed. A deed containing express covenants by the grantor or seller as to good title and right to possession.

Indemnification agreement. An agreement that protects the agency against damage, loss, fraud, theft, or injury as a result of useful conduct or negligence on behalf of the issuing agent, approved attorney, or title company. This agreement may also be entitled closing protection letter, insured closing letter, insured closing service agreement, statement of settlement service responsibilities, or letters which provide similar protection.

Issuing agent. An individual or entity who is authorized to issue title insurance for an approved title insurance company.

Land purchase contract (contract for deed). An agreement between the buyer and seller of land in which the buyer has the right to possession and use of the land over a period of time (usually in excess of 1 year) and makes periodic payments of a portion of the purchase price to the seller. The seller retains legal title to the property until the final payment is made, at which time the buyer will receive a deed to the land vesting fee title in the buyer.

Mortgage. Real estate security instrument which pledges land as security for the performance of an obligation such as repayment of a loan. For the purpose of this regulation the term “mortgage” includes deed of trust and deed to secure debt. A real estate mortgage or deed of trust form for the state in which the land to be taken as security is available in any agency office, and will be used to secure a mortgage to the agency.

National Office. The National Headquarters Office of FSA or RHS depending on the loan program involved.

OGC. The Office of the General Counsel, United States Department of Agriculture.

Program regulations. The agency regulations for the particular loan program involved (e.g., 7 CFR part 3550 for single family housing (SFH) loans).

Quitclaim deed. A transfer of the seller's interest in the title, without warranties or covenants. This type of deed is used by the agency to convey title to purchasers of inventory property.

RHS. The Rural Housing Service, an agency of the United States Department of Agriculture, or its successor agency. RHS is the successor agency to the Rural Housing and Community Development Service (RHCD) which was, in turn, the successor agency to the Farmers Home Administration.

Seller. Individual or other entity which convey ownership in real property to an applicant for an agency loan or to the agency itself.

Special warranty deed. A deed containing a covenant whereby the grantor agrees to protect the grantee against any claims arising during the grantor's period of ownership.

State Office. For FSA, this term refers to the FSA State Office. For RHS, this term refers to the Rural Development State Director.

Title clearance. Examination of a title and its exceptions to assure the agency that the loan is legally secured and has the required priority.

Title company. A company that may abstract title, act as an issuing agent of title insurance for a title insurance company, act as a loan closing agent, and perform other duties associated with real estate title clearance and loan closing.

Title defects. Any exception or legal claim of ownership (through deed, lien, judgment, or other recorded document), on behalf of a third party, which would prevent the seller from conveying a marketable title to the entire property.

Trust deed. A three party security instrument conveying title to land as security for the performance of an obligation, such as the repayment of a loan. For the purpose of this regulation a trust deed is covered by the term "mortgage." A trust deed is the same as a deed of trust.

Voluntary conveyance. A method of liquidation by which title to agency security is transferred by a borrower to

the agency by deed in lieu of foreclosure.

Warranty deed. A deed in which the grantor warrants that he or she has the right to convey the property, the title is free from encumbrances, and the grantor shall take further action necessary to perfect or defend the title.

[61 FR 11711, Mar. 22, 1996, as amended at 67 FR 78327, Dec. 24, 2002]

§ 1927.53 Costs of title clearance and closing of transactions.

The borrower or the seller, or both, in compliance with the terms of the sales contract or option will be responsible for payment of all costs of title clearance and closing of the transaction and will arrange for payment before the transaction is closed. These costs will include any costs of abstracts of title, land surveys, attorney's fees, owner's and lender's policies of title insurance, obtaining curative material, notary fees, documentary stamps, recording costs, tax monitoring service, and other expenses necessary to complete the transaction.

§ 1927.54 Requirements for closing agents.

(a) *Form of title certification.* State Offices are directed to require title insurance for all loan closings unless the agency determines that the use of title insurance is not available or is economically not feasible for the type of loan involved or the area of the state where the loan will be closed. If title insurance is used, State Offices are authorized to require a closing protection letter issued by an approved title insurance company to cover the closing agent, if available. A closing protection letter need not be furnished when the closing is conducted by the title insurance company.

(b) *Approval of closing agent.* An attorney or title company may act as a closing agent and close agency real estate loans, provide necessary title clearance, and perform such other duties as required in this subpart. A closing agent will be responsible for closing agency loans and disbursing both agency loan funds and funds provided by the borrower in connection with the agency loan so as to obtain title and security position as required by the agency.